

## Internal Revenue Service

Department of the Treasury  
Washington, DC 20224

Number: **201244002**

Release Date: 11/2/2012

Index Number: 1362.04-00, 1362.02-03

Third Party Communication: None  
Date of Communication: Not Applicable  
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Refer Reply To:  
CC:PSI:B01  
PLR-104479-12  
Date:  
July 09, 2012

### LEGEND

X =

A =

Trust 1 =

Trust 2 =

Trust 3 =

Year =

Date 1 =

Date 2 =

Date 3 =

State =

Dear .:

This responds to a letter dated January 31, 2012, submitted on behalf of X by X's authorized representative, requesting relief under section 1362(f) of the Internal Revenue Code (the Code).

## FACTS

According to the information submitted and representations within, X was incorporated in Year, under the laws of State. Effective Date 1, X elected to be taxed as an S corporation. A was a shareholder of X. On Date 2, A transferred X shares to Trust 1 and Trust 2. On Date 3, A transferred X shares to Trust 3. Timely elections to treat Trust 1, Trust 2, and Trust 3 as ESBTs were not made.

X represents that Trust 1, Trust 2 and Trust 3 have at all times met the requirements of an ESBT within the meaning of § 1361(d)(3). Throughout the period that Trust 1, Trust 2, and Trust 3 have been shareholders of X, they have each filed their federal income tax returns consistent with being an ESBT. X represents that its S corporation election termination was inadvertent and was not motivated by tax avoidance or retroactive tax planning. Further, X represents that X and its shareholders agree to make any adjustments required as a condition of obtaining relief under the inadvertent termination rule as provided under § 1362(f) of the Code that may be required by the Secretary.

## LAW AND ANALYSIS

Section 1361(a)(1) of the Code provides that the term "S corporation" means, with respect to any taxable year, a small business corporation for which an election under § 1362(a) is in effect for such year.

Section 1361(b)(1) defines a "small business corporation" as a domestic corporation which is not an ineligible corporation and which does not (A) have more than 100 shareholders, (B) have as a shareholder a person (other than an estate, a trust described in § 1361(c)(2), or an organization described in § 1361(c)(6)) who is not an individual, (C) have a nonresident alien as a shareholder, and (D) have more than 1 class of stock.

Section 1361(c)(2)(A)(v) provides that, for purposes of § 1362(b)(1)(B), an electing small business trust (ESBT) may be an S corporation shareholder.

Section 1361(e)(1)(A) provides that an ESBT means any trust if (i) such trust does not have as a beneficiary any person other than (I) an individual, (II) an estate, (III) an organization described in § 170(c)(2), (3), (4), or (5), or (IV) an organization described in § 170(c)(1) which holds a contingent interest in such trust and is not a potential current beneficiary, (ii) no interest in such trust was acquired by purchase, and (iii) an election under § 1361(e) applies to such trust.

Section 1361(e)(1)(B) provides that the term “electing small business trust” shall not include (i) any qualified subchapter S trust (as defined in § 1361(d)(3)) if an election under § 1361(d)(2) applies to any corporation the stock of which is held by such trust, (ii) any trust exempt from tax under subtitle A, and (iii) any charitable remainder annuity trust or charitable remainder unitrust (as defined in § 664(d)).

Section 1361(e)(3) provides that an election under § 1361(e) shall be made by the trustee. Any such election shall apply to the taxable year of the trust for which made and all subsequent taxable years of such trust unless revoked with the consent of the Secretary.

Section 1.1361-1(m)(2)(i) provides that the trustee of an ESBT must make the ESBT election by signing and filing, with the service center where the S corporation files its income tax return, a statement that meets the requirements of § 1.1361-1(m)(2)(ii).

Section 1.1361-1(m)(2)(iii) provides that the trustee of an ESBT must file the ESBT election within the time requirements prescribed in § 1.1361-1(j)(6)(iii) for filing a QSST election (generally within the 16-day-and-2-month period beginning on the day that the stock is transferred to the trust).

Section 1362(f) provides, in relevant part, that if (1) an election under § 1362(a) by any corporation was not effective for the taxable year for which made (determined without regard to § 1362(b)(2)) by reason of a failure to meet the requirements of § 1361(b); (2) the Secretary determines that the circumstances resulting in such ineffectiveness or termination were inadvertent; (3) no later than a reasonable period of time after discovery of the circumstances resulting in such ineffectiveness or termination, steps were taken so that the corporation for which the termination occurred is a small business corporation; and (4) the corporation for which the termination occurred, and each person who was a shareholder in such corporation at any time during the period specified pursuant to § 1362(f), agrees to make the adjustments (consistent with the treatment of such corporation as an S corporation) as may be required by the Secretary with respect to such period, then, notwithstanding the circumstances resulting in such ineffectiveness or termination, such corporation shall be treated as an S corporation during the period specified by the Secretary.

## CONCLUSION

Based solely on the facts submitted and the representations made, we conclude that X's S election inadvertently terminated within the meaning of § 1362(f) on Date 2 when A transferred X shares to Trust 1 and Trust 2. We further conclude, had X's S election not already terminated, it would have inadvertently terminated on Date 3 when A transferred X shares to Trust 3. Pursuant to the provisions of § 1362(f), X will be treated as an S corporation from Date 2 and thereafter, provided X's S corporation

election is not otherwise terminated under § 1362(d).

Within 120 days from the date of this letter, an election to treat Trust 1 and Trust 2 each as an ESBT effective Date 2 and an election to treat Trust 3 as an ESBT effective Date 3, must be made with the appropriate service center. A copy of this letter should be attached to the ESBT election.

Except as specifically ruled upon above, we express or imply no opinion concerning the federal tax consequences of the facts of this case under any other provision of the Code. Specifically, we express or imply no opinion regarding X's eligibility to be an S corporation.

This ruling is directed only to the taxpayer who requested it. According to § 6110(k)(3), this ruling may not be used or cited as precedent.

Pursuant to the power of attorney on file with this office, we are sending a copy of this letter to your authorized representative.

Sincerely,

Faith Colson

Faith Colson

Senior Counsel, Branch 1

Office of the Associate Chief Counsel

(Passthroughs & Special Industries)

Enclosures (2)

Copy of this letter

Copy of this letter for section 6110 purposes

cc: